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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,104	11/12/2003	Douglas Craig Scott	9118M	5134

27752	7590	12/27/2006
THE PROCTER & GAMBLE COMPANY		
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EXAMINER	
GEMBEH, SHIRLEY V	

ART UNIT	PAPER NUMBER
1614	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary****Application No.**

10/706,104

**Applicant(s)**

SCOTT ET AL.

**Examiner**

Shirley V. Gembah

**Art Unit**

1614

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35  
is/are rejected.
- 7) ☒ Claim(s) 1,2,18,19,28,32 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/03/06 has been entered.

### **Response to remarks**

The response filed October 03, 2006 presents remarks and arguments to the office action mailed May 05, 2006. Applicants' request for reconsideration of the rejection of claims in the last office action has been considered.

Applicants' arguments, filed 10/03/06, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### **Status of claims**

Claims 1-2, 18-19, 28, 32 and 34 have been amended and claims 1-35 are pending and examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Objections***

Claims 1, 19, 28, 32 and 34 are objected to because of the following informalities: line 14 of claim 1 after 10 should be ml and not mils as an example. Appropriate correction is required.

Claims 1, 18, 28, 32 and 34 are objected to because of the following informalities: A claim should only contain a period at the end and at abbreviations. Appropriate correction is required.

***Maintained Claim Rejections - 35 USC § 112***

Applicant argues the term "about" stating the case law gives flexibility to the use of the term.

In response while this is so for the term about, it still does not satisfy the use of the terms of "from about", "for at least about". Careful consideration has been give to Applicants' argument and the case law has been considered, but the explanation is unpersuasive. The rejection is maintained and again repeated below.

Claims 1-17, 18-27, and 28-35 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "from about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, one of ordinary skill in the art would not be reasonably apprised of the

scope of the invention, because one of skill will not be able to determine which term is in control.

Claims 28 is also rejected as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The "for at least about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, one of ordinary skill in the art would not be reasonably apprised of the scope of the invention, because one of skill will not be able to determine which term is in control. For at least about can be interpreted to be  $\geq$ , for example for atleast 2 mins is interpreted to be from 1 to 2 and from 2-infinite as in claim 28.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The amended claim 1 for example recites at lines 9-14 in consideration of the section of the specification on pages 6-7 reveals that the visibility result as claimed

requires a "manual, flat head, soft toothbrush" which is not in the claim amending. The claims are now broader as any toothbrush can be used.

***Maintained Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6-10, 12-16, 30,32 and 34 are rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Lawlor US 6,706,256 B2.

Applicant traverses: That the Lawlor reference teaches away from the claimed invention (see page 9, para. 4) stating that Lawlor disclosure of an oral dentifrice is retained only for 5-30 seconds and the composition disappears by 5 minutes.

In response, (i) In claim 1 of instant application the tablets are chewed for about 5-30 seconds and the change of the tooth/teeth is what is seen on the surface for 5-60 minutes. As stated in the reference it is noted that it is more preferable for the retentive agent to disappear in five minutes, which anticipates that it has the capability to stay more than 5 minutes (col. 17, lines 24-32). Please note that claim 1 is broad and comprises of from about 1% to about 40 % of a retentive agent. The limitations of the

claims are clearly met. With regards to the argument that the Lawlor reference does not teach the composition remaining in the oral cavity more than 5 minutes is unpersuasive, clearly because the claims are directed to a composition, that is chewed and the residue is what remains on the surface of the said tooth/teeth. Furthermore, the claim recites characteristics of the ingredients, when ingredients of the defined characteristics are used it will end up having the effect of the claimed invention, ie., will adhere to the tooth/teeth for a duration of time. Also note that no particular agent is addressed in claim one so a compound having the property of a water soluble hydrophilic polymer, in composition with a water soluble hydrophilic gums exposed to saliva will carry the same property.

(ii) Applicant argues that for the claimed to be anticipated, each and every element of the claim must be present. While this is true, Applicants' claim is not defined for such a condition to be applied. The claim is broad and the agents that encompasses the claims especially when the ingredients used for example the retentive agent is karaya gum is disclosed (see col. 21, lines 50-55). Emphasis added again, Products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Applicant's arguments filed have been fully considered but they are not persuasive. See reasons stated above. The rejection has below has been modified to address the amended claims submitted.

Lawlor discloses current claims 1, 4 and 6 karaya (retentive agent) wherein the amount is from 0.1%- 15% (see col. 21 line 55), wherein the composition is non-cariogenic at col. 20 line 43, a chewable solid unit at col. 15 line 46+ where it is referred to as hard and low boiled candy, wherein the composition is less than 65% at col. 15 lines 9-10, wherein the retentive agent is hydroxymethyl cellulose at col. 21 line 51 as in current claims 7 and 8, anticalculus agent at col. 10 line 31 (current claim 9), fluoride ions current claims 10 and 12 at col. 11 line 48, the fluoride level is about 200-300 ppm (current claim 13) at col. 11 line 60 +, where the solid unit is a compressed tablet at col. 26 line 62 (current claim 14), wherein the oral carrier is a flavor (current claim 15 at col. 23 line 20+, water soluble buffers as sodium bicarbonate at col. 21 line 62. With regards to the number of molar or tooth that the composition adheres to is anticipated because something in your mouth will definitely spread to more than one teeth.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

***Maintained Claim Rejections - 35 USC § 103***



Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor US 6,706,256 B2 in view of Aberg et al., WO 88/10110.

Applicants' argument with regards to Lawlor is the same line as that of above, arguing that one of ordinary skill in the art would not have combined Lawlors teaching with that of Aberg.

With regards to Aberg, Applicant argues that the composition is chewed or swished around for 2 minutes and swallowed. Although that is true for the Aberg reference, the Lawlor reference teaches the use of a chewing gum, chewing gum has been around for a while and is expectorated after its use. With regards to forming both references teaches it so if all the components are placed in a chewing gum and when chewed forms a for thus one of ordinary skill in the art would be motivated to make an oral care dentifrice that is a chewable solid unit dosage into a chewing gum and expectorated after the gum is chewed. Next, the limitation of expectorate does not give patentability to the invention over the prior art, because as far as Examiner knows there is no ingestible dentifrices. Now taking the Aberg reference, it teaches swallowing because they were prepared for feeding studies. Aberg was used to show the teaching of a non-effervescent tablet, and when that information is known to one of ordinary skill in the art and compared to Lawlor the claimed invention would have been obvious. Careful consideration has been given, but the traversal is found unpersuasive and the rejection is maintained as in the office action of record.


No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley V. Gembah whose telephone number is 571-272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SVG  
12/13/06

  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER